

State of the Judiciary, Jefferson City, January 2019

30 January 2019

*This is the written draft from which Zel M. Fischer,
chief justice of the Supreme Court of Missouri,
delivered his State of the Judiciary address Wednesday morning, January 30, 2019,
during a joint session of the Missouri General Assembly in Jefferson City, Missouri.*

(All photos courtesy Tim Bommel, Missouri House of Representatives communications office)

Introduction



Thank you, Lieutenant Governor Kehoe, Secretary of State Ashcroft, President Pro Tem Schatz, Speaker Haahr, and members of this 100th General Assembly, the executive branch and the judiciary. On behalf of all of Missouri's state judges, I am pleased to present you with this 46th State of the Judiciary.

The framers of our Constitution divided the power of government among three separate but co equal branches, intending them to serve different purposes. But this separation does not mean we cannot listen to one another.

We know our partners in the legislative and executive branches are committed to doing the best job possible to make Missouri better. We are no different. The state of the judiciary is good.

Constitutionally critical to our system of government, the judiciary is designed to be different from the political and policymaking branches of government. Chief Justice John Roberts of the Supreme Court of the United States explained it this way: "We wear black robes to convey the notion that our individual views [and] personality do not have anything to do with the function we have to play in terms of coming to the correct decision on the law."

You may not know one of his colleagues on our nation's high court, Justice Clarence Thomas, had his first legal job right here in Missouri, across the street in the red brick building, as an assistant attorney general under Jack Danforth. Justice Thomas has said, "Judicial independence is critical to liberty and to justice. In our

great country, the judiciary is not a puppet of those in power, nor is it the engine for pioneering social change. Rather, it is a safeguard against tyranny and an assurance of neutral arbiters for those seeking the protection of law."

Public opinion tends to galvanize behind particular outcomes. Judges have a duty to resist that temptation. Our duty and our oath is not to be popular but to be faithful to the law.

Treatment courts

As I was here a couple of weeks ago listening to Governor Parson give his address, it occurred to me there are at least a few things Governor Parson and I have in common – we both call rural Missouri home, we are both probably more comfortable in cowboy boots than dress shoes, and neither of us has been accused of being



soft on crime. But I was pleased to hear him commit in his state of the state address he would not build another prison while he is governor.

When I began practicing law three decades ago, we were all told the proper answer was to be tough on crime. But, as time has proven, being tough on crime is not necessarily being smart on crime. Our national incarceration rates have ballooned – and for many nonviolent offenders, we have failed to address their underlying issues of substance abuse and mental illness. Let's save our prisons for those we are afraid of, not just mad at.

Over-incarcerating nonviolent offenders – especially drug and alcohol offenders – costs millions and is not curing the problem. We need to spend public funds where we see proven results. Often, what they really need – and what we can provide without compromising public safety – is treatment for substance abuse and mental illness.

This is why it is no longer enough for the courts to simply resolve cases. Instead, you and our citizens expect your courts to help change lives by breaking the cycle of crime among our nonviolent offenders and making

them more productive. Since Missouri's first treatment court was founded more than 25 years ago, the Show-Me State has been showing everyone else how to do it ... and we continue to get better at it.

But as I explained in my address to you last year, citizens in some of our counties still lack access to a local treatment court. I thank Governor Parson for making treatment courts a priority of last fall's special session – and I thank you for passing this important legislation.

Now, we need your help funding the vital services our treatment courts can provide. The governor included in his budget recommendations a restoration of the rest of the core funding to the treatment courts we asked for last year but did not receive, plus nearly \$3.1 million in additional funding to help expand the reach of our treatment court services. Together, not only can we continue to be smart on crime, but, more importantly, we can continue to save money ... and lives.

Veterans courts

Some of our treatment courts focus on an offender's underlying issue, but one focuses on a unique population – our veterans. As you know, one of the primary rules of battle is not to leave anyone behind. But that guiding principle is just as important off the battlefield.

Due in part to the stress of combat or adjusting to life at home, some of our military men and women suffer from mental illness or addiction, and they may find themselves on the wrong side of the law. It is incumbent on us to make sure the justice system for which they have sacrificed recognizes their unique challenges and does not leave them behind.

Missouri now has veterans treatment courts available in three dozen counties, plus the cities of St. Louis and Kansas City. These unique programs use volunteer veterans and active-duty soldiers as mentors. Research shows veterans benefit the most with help from others who understand the military experience.

Our veterans treatment courts are a win-win for all Missourians – in addition to helping those who have served our country regain their lives, crime is reduced, public safety is improved, and we are able to better protect those who have protected us.

Military spouse rule

We also are honoring military families by finding a way for spouses of military personnel stationed in Missouri to practice law while they are here.

The process to become licensed to practice law in any state is rigorous, and for good reason – it's designed to

protect the public. The bar exam is hard. But attorneys who are married to active duty military service members face the prospect of going through that process each time their spouses are relocated. You've heard the adage, "when one member joins, the whole family serves?" For some members of our active duty military, that means their attorney spouses must sit for a bar exam in every new state in which they find themselves ... or abandon their career ... or split up the military family. We realized this makes little sense.

So we created a pathway for military spouses who are licensed attorneys to practice law while they are in Missouri. Under the new rule – which took effect January 1 – lawyers with licenses in good standing from other jurisdictions, whose spouses are full-time active service members of the United States armed forces assigned to a duty station in Missouri or a contiguous state, can apply for temporary admission to practice law in Missouri.

Allowing these qualified attorneys to share their legal talents with our citizens while they are in our state will honor the sacrifice they make as military spouses and will serve Missourians well. This rule is already being utilized – just nine days after it took effect, we had an applicant. Her story exemplifies why we always need to look for ways to make our legal system better for those we serve.



Karen Towns is the daughter of a military service member and was born at an American air base overseas. She earned her law degree in North Carolina and was serving as associate chief counsel for the United States Food and Drug Administration when she married an officer in the United States Army. In fewer than a dozen years since then, he – and, therefore, she – have been relocated more than half a dozen times, to duty stations in Kansas, Kentucky, Maryland, Washington – and twice in Missouri.

Since July 2017, Karen's husband – Colonel Eric Towns – has been stationed at Fort Leonard Wood, where he serves as garrison commander. When they arrived in Missouri, the only way for her to become licensed to practice law here was to sit for another bar exam. Instead, she has been working as a non-attorney compliance officer at the Missouri University of Science and Technology in Rolla. But our new rule cut through the red tape that had been preventing her from using her legal skills to their fullest.

I am pleased to announce Karen has been granted temporary admission to practice law in Missouri. She and Colonel Towns are with us today – please join me in thanking them *both* for their important service.

Retired lawyer pro bono rule

We also have recognized we need to do more to provide equal access to civil justice. One of the fundamental purposes of your courts is to ensure access to justice for all, regardless of background, wealth, power or ideology. This ideal works well on paper but is hard to achieve in reality. The law is complex, and many individuals and businesses perceive they lack access to affordable legal services.

A legal system that serves only the well-to-do is neither justice *for* all – nor justice *at* all.

Missouri lawyers try to help fill the need. Each year, hundreds volunteer their time, unpaid, to help those who otherwise cannot afford an attorney. And Missouri is part of a national program – like an online version of a walk-in clinic – allowing people who cannot afford a lawyer to get quick advice about a specific civil legal issue from a volunteer lawyer.

But by far the primary resource for those least able to afford an attorney comes from our state's legal service organizations. Unfortunately, the justice gap is much wider than these volunteer lawyers and legal service organizations can bridge on their own.

They need help. Pursuant to a new rule and new pilot project, retired lawyers who agree to provide solely free legal help through one of our state's legal aid organizations can apply annually to our Court to have their attorney enrollment fees waived.

As baby boomers enter retirement, many will be able to continue sharing their legal experience in meaningful and impactful ways. More importantly, our legal aid organizations will be able to help more low-income citizens throughout Missouri who need – but cannot afford – civil legal assistance.

Two people on the front lines of the battle to close the justice gap are here today. From Legal Aid of Western Missouri, its executive director, retired judge Joe Dandurand, and Latricia Scott Adams, who for *30 years* has served as its volunteer attorney project director. Let's thank them for their service.

Pretrial release

Some common-sense solutions are relatively simple, like our new military spouse rule and retired lawyer pro bono rule. Others are more difficult to achieve, and a few require tough conversations, like dealing with pretrial detention. The problem is real. Too many who are arrested cannot afford bail even for low-level offenses and remain in jail awaiting a hearing. Though presumed innocent, they lose their jobs, cannot support their families and are more likely to reoffend.

We all share a responsibility to protect the public – but we also have a responsibility to ensure those accused of crime are fairly treated according to the *law*, and not their pocket books.

Missouri law sets the framework for how pretrial detention should work. Under the circumstances of each case, a judge must balance two constitutional imperatives – one to afford the accused an opportunity for pretrial release, and the other to insist on “sufficient sureties” the defendant will appear in court. Judges also must balance statutory considerations for protecting a crime victim, a witness and the community from a defendant who poses a danger to them.

During the past year, the Court brought together a whole host of experts – judges, prosecutors, defense attorneys, law professors and court officials – they spent countless hours identifying ways for improvement and working to devise common-sense modifications to our criminal justice system. As a result of this hard work, the Court has ordered *significant* changes to its rules governing pretrial release.

These changes – which will take effect July 1 – are extensive ... and meaningful. Here are some highlights:

- The court must start with non-monetary conditions of release and may impose monetary conditions only if necessary and only in an amount not exceeding that necessary to ensure safety or the defendant’s appearance.
- The court may not order a defendant to pay any portion of the costs of any conditions of release without first considering how to minimize or whether to waive those costs.
- A court may order a defendant’s pretrial detention only if it determines – by clear and convincing evidence – that no combination of non-monetary and monetary conditions will ensure safety of the community or any person.
- The new rule also limits how long a defendant may be detained without a court hearing, and ensures a speedy trial for those who remain in jail.

This new rule helps ensure the determinations – and conditions – of pretrial release are made with the best information available. We believe these changes will improve our criminal justice system.

Investing in Missouri’s courts

In his state of the state address, Governor Parson said being a good leader is about your ability to make those around you better. So I am here to ask for your help. I know revenues are tight, you have important priorities to consider ... and I do not imagine you have very many constituents calling or e-mailing you begging for additional court funding.

But that does not mean your court system and the services we provide are not critical for the health of our state. Without the reliable availability of courts in our local communities, with fair and impartial judges who are well-versed in the law, and competent, professional court staff, your constituents’ disputes might go

undecided. Small business owners cannot afford undue delay in having their legal matters decided, and big businesses look for strong, stable courts when deciding where to employ large numbers of people.

Like so many others in state government, we in the Missouri courts have been streamlining our services, doing more with less for years, and we have proven we are a sound investment for Missouri tax dollars. To continue providing a high level of service – now and for future generations – we need additional investment in developing our workforce and improving our technological infrastructure.

Right now, our judicial education program operates on only 74 percent of the total amount of funding to which it is authorized by statute. But 74 percent does not allow us to offer as many in-person classes as we need, or to supplement those classes with as many web-based training sessions as we should. It will cost just less than a half-million dollars to close this gap between funding authorized and funding appropriated. Although Governor Parson did not include this item in his recommendations, I ask you to actually fund what you have authorized us to spend on judicial education. That amount would allow our judicial education program to function at full strength, as it has in the past.

Governor Parson encouraged us to be honest about the challenges we face. Here is one – technology has become the way we all do business and expect to do business, but your courts struggle to meet the public's 21st century expectations with 1990s resources.

The Missouri General Assembly in 1994 mandated the development of a statewide court automation system. But the \$7 fee has not changed in a quarter-century and does not generate enough money to sustain current functions. In fact, the fee only pays for a third of the technology necessary to provide the services Missourians have come to expect.

Missouri courts have been virtually paperless since 2014, and you and your constituents have come to rely on the benefits that electronic system makes possible: Case.net, Track This Case, Pay By Web and the electronic filing of cases. But what happens if we cannot sustain the technology that has become the way people do business in their courts?

We may find out by July 2021, when we anticipate the Missouri courts' statutorily mandated system – built on 25-year-old technology – will be unable to receive critical system updates. We are building a replacement case management system, but at current funding levels, the new Show-Me Courts system – which includes municipal case processing – will not be finished in time.

Equal access to justice requires using technology to resolve disputes fairly and efficiently. We need to develop user-friendly, electronic systems to permit citizens to participate in routine court proceedings without missing work. We need to increase the functionality of Case.net to allow citizens to be fairly informed. Missourians expect your courts' technology systems to join the 21st century, which will require increased and sustainable funding from general revenue.

Nonpartisan court plan

Technology is not the only thing changing rapidly. How different the faces are in this chamber than just a year ago. Most of our state office holders are in new positions, and more than 60 of you are new to the legislature.

We have experienced change as well. Nearly 60 trial judges just attended new judge orientation last week. Our appellate judicial commission has sent two panels to Governor Parson. Last fall, Governor Parson made his first appellate appointment, selecting Tom Chapman – the presiding judge from the 43rd circuit (spanning five counties in northwest Missouri) – to a vacancy on the Missouri Court of Appeals, Western District. Earlier this month, Governor Parson selected Robin Ransom – the presiding judge in St. Louis city – to be the newest appellate judge in our Eastern District.

I remain steadfast that Missouri's nonpartisan court plan is the best method for selecting judges to our urban trial courts, appellate court and supreme court. We have a plaque in our building across the street commemorating the courage of the people of Missouri in amending their constitution in 1940 to adopt the Missouri court plan, making ours the first state in the nation to embrace judicial merit selection. Our foresight looks brilliant today, as the entire Supreme Court of West Virginia – which has direct partisan elections – faced impeachment last year, and the confirmation process for Justice Brett Kavanaugh's nomination to the Supreme Court of the United States looked nothing like the advice and consent of the senate our founding fathers intended.

As a supreme court judge, the idea of presenting oneself as pro-something or con-something else undercuts a system in which judges are meant to be neutral arbiters of our citizens' disputes and, ultimately, undermines the public's trust and confidence in their courts. To paraphrase Chief Justice Roberts, judges do not sit on opposite sides of an aisle. They do not caucus in separate rooms. They do not serve one party or interest. They serve one nation. Or, in our instance, one Missouri.

I will end where I began, by explaining the judicial branch is designed to be different from the political and policymaking branches of government. Our judicial code of conduct requires us to refrain not only from actual bias but to minimize even the appearance of partiality.

Conclusion

While I know you take your responsibilities here in the Capitol seriously, as do I, do not forget those at home who support, encourage and pray for you daily. In the balcony, with other family members, are Julie, my wife of more than 34 years, and my mother Nancy. Thank you for your infinite love, support, encouragement and

prayers.

Providing the family security is my former courtroom bailiff, my best friend, the best man at my wedding – he is also my father, Bob Fischer.

Everybody who knows my dad has at least one story – but I'll close with this one. In the fall of 2008, Dad drove me down for my interview with Governor Matt Blunt. Once back in his pickup truck after the interview, I told Dad I thought Governor Blunt might actually appoint me to the Supreme Court of Missouri. He said, "Well, he ought to, but are you sure you want the position? You're already a judge, and this is a four-and-a-half-hour drive from your wife and three of your four children still in high school." I explained to Dad this was a position where you not only could make a paycheck, you could also make a difference. I concluded, it is not like I would be joining the circus. Then Dad – with his humble trademark grin – replied, "Are you sure?"

Thank you all, and may God Bless *you all*.

